

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CURTIS N. MACK,

Petitioner,

v.

UNITED STATES OF AMERICA,

CASE NO. 2:11-CV-01004

CRIM. NO. 2:98-CR-00162

JUDGE JAMES L. GRAHAM

MAGISTRATE JUDGE E.A. PRESTON DEAVERS

Respondent.

OPINION AND ORDER

On November 10, 2011, the Magistrate Judge issued a *Report and Recommendation* pursuant to Rule 4 of the Rules Governing Section 2255 Cases in the United States District Courts recommending that the instant motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 be transferred to the United States Court of Appeals for authorization for filing as a successive petition. Petitioner objects to the Magistrate Judge's *Report and Recommendation*. Petitioner argues that under 28 U.S.C. § 2255(f)(4),¹ his habeas corpus petition cannot be construed

¹ 28 U.S.C. § 2255(f) provides:

(f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of--

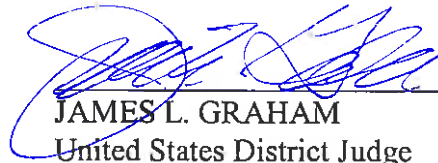
- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

as successive. This Court does not agree. The provisions of 28 U.S.C. § 2255(f) set forth the applicable rules for calculating the date on which the one-year statute of limitations begins to run, but do not effect the rules regarding the filing of successive petitions.

Pursuant to 28 U.S.C. § 636(b), this Court has conducted a *de novo* review. For the reasons detailed in the Magistrate Judge's *Report and Recommendation*, Petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

IT IS SO ORDERED.

Date: December 9, 2011


JAMES L. GRAHAM
United States District Judge

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.